

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4214 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

POCHANBHAI VECHANBHAI VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ADIL MEHTA for Petitioner
MR. NIGAM SHUKLA, A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 19th April, 1996 passed by the District Magistrate, Bharuch, detaining the petitioner under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA Act" for short). The detention order was executed on 28th April, 1996 and since then the petitioner is under

detention lodged at District Jail at Bhavnagar.

This Special Civil Application was filed in this Court on 19th June, 1996 and on 20th June, 1996 rule returnable by 11th July, 1996 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that five criminal cases under the various provisions of the Indian Penal Code were registered against the petitioner with Valia Police Station, out of which, five were pending trial in the Court and in one case the police investigation was going on at the time when the detention order was passed. After noticing the allegations of these criminal cases against the petitioner, the detaining authority has referred to the statements made by four witnesses on 13th March, 1996, 25th March, 1996 and 28th March, 1996. The witnesses have stated about the petitioner's criminal activities of maintaining gangs of goondas and use of weapons, theft cases, cases of extortion; that the petitioner was a head strong person and used to beat innocent persons publicly. One of the witnesses has stated that the petitioner had threatened him to join his party for the ensuing elections. On the basis of the allegations and materials as aforesaid, the detaining authority has satisfied himself that the petitioner had become a problem to the public order and the proceedings of externment may not be expedient in the facts of the present case so as to dissuade the petitioner from continuing his antisocial and criminal activities as above. On the request of the witnesses, the detaining authority has also invoked Section 9(2) of the PASA Act.

Although the detention order has been challenged on more than one ground, the learned Counsel for the petitioner has laid stress on the ground that the allegations as has been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order. I have considered the statements made on behalf of both the sides. The petitioner might have been engaged in the criminal activities and may be that certain criminal cases are pending against him but the allegations and materials which have prevailed with the detaining authority for the purpose of passing the detention order in the facts of this case do not constitute a case of breach of public

order. Such allegations can at the most be said to be a breach of law and order. I find that the detention order in the present case has been passed on a collateral ground of breach of law and order and the ground of breach of law and order cannot be said to be germane for the purpose of passing the detention order as the respondents have failed to make out a case of any ingredient in regard to the breach of public order. The impugned detention order, therefore, cannot be sustained in the eye of law.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 19th April, 1996 passed by the District Magistrate, Bharuch is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

sf-mrc